

**Letter of Findings: 04-20110620
Gross Retail Tax
For the Tax Years 2008-2010**

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ISSUES

I. Sales Tax—Exempt Sales.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-4-1; [45 IAC 2.2-8-12](#).

Taxpayer argues that it has additional customer exemption certificates and that the amount of additional sales tax should be adjusted.

II. Use Tax—"Accounting Adjustment."

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-8.1-5-1; *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Department has improperly subjected an "accounting adjustment" to use tax.

STATEMENT OF FACTS

Taxpayer is an Indiana manufacturer of custom made furniture. The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records and found that Taxpayer owed additional sales and use tax. Taxpayer disagreed with a portion of the assessment. An administrative hearing was conducted during which Taxpayer's representative explained the basis for its protest, and this Letter of Findings results.

I. Sales Tax—Exempt Sales.

DISCUSSION

Taxpayer has provided copies of additional exemption certificates. Taxpayer indicates that these particular certificates were not considered during the original audit and that they should be reviewed now.

IC § 6-2.5-2-1(a) imposes sales tax on retail transactions made in Indiana. IC § 6-2.5-1-2 defines a retail transaction as "a transaction of a retail merchant that constitutes selling at retail as described in IC § 6-2.5-4-1... or that is described in any other section of IC § 6-2.5-4." IC § 6-2.5-4-1(a) provides that "[a] person is a retail merchant making a retail transaction when he engages in selling at retail." IC § 6-2.5-4-1(b) further explains that a person sells at retail when he "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration."

During the audit, Taxpayer was unable to provide a number of exemption certificates. The auditor was therefore unable to verify that those sales were exempt from the sales tax. The relevant regulation is [45 IAC 2.2-8-12\(b\)](#) which states, "Retail merchants are required to collect sales and use tax on each sale which constitutes a retail transaction unless the merchant can establish that the item purchased will be used for an exempt purpose."

The regulation cautions that, "Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof." [45 IAC 2.2-8-12\(d\)](#).

There is no question that Taxpayer entered into retail transactions for which – absent an exemption – Taxpayer was required to collect sales tax. Taxpayer has somewhat belatedly supplied exemption certificates from its customers for certain of its sales. The audit division is requested to review the late-filed exemption certificates and to make whatever adjustments it deems appropriate. However, Taxpayer is reminded that sales tax becomes due at the time of the transaction; either the purchaser is exempt at the time of the transaction or it is not exempt. If the purchaser claims an exemption, the exemption certificate should be obtained at the time the transaction occurs otherwise the burden of proving the transaction was exempt becomes measurably more difficult.

FINDING

Taxpayer's protest on this issue is sustained in part and denied in part subject to the results of the review of the audit division. The audit division is requested to review the exemption certificates and make whatever adjustments that are warranted.

II. Use Tax—"Accounting Adjustment."

DISCUSSION

Initially, the Department found that Taxpayer had recorded a \$12,123 (audit report p.20) retail transaction in its books and records for which Taxpayer had failed to pay sales tax at the time of the transaction or remit use tax to the Department. Taxpayer asserts this adjustment in its books and records represents an "accounting adjustment" and not a transaction that is subject to sales and use tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a).

Taxpayer maintains that the Department has improperly subjected an "accounting adjustment" that it made in the amount of \$12,123 (audit report p.20) to use tax. During the protest, Taxpayer presented additional documentation to support its assertions. Taxpayer has provided sufficient documentation to establish the \$12,123 "accounting adjustment" was not a retail transaction, and, therefore, should not be subjected to sales and use tax.

FINDING

Taxpayer's protest to the imposition of use tax is sustained.

SUMMARY

Taxpayer's protest to the imposition of sales tax is sustained in part and denied in part subject to the results of the review of the audit division, as discussed in Issue I. The audit division is requested to review the additional exemption certificates and to make the appropriate adjustments to the assessment. Taxpayer's protest to the imposition of use tax on the \$12,123 "account adjustment" is sustained, as discussed in Issue II.

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